MT LEGISLATIVE HISTORY

Chapter 433 1977

Bill H 320 S _____ Original bill & hist. ✓ C

H. Committee on Judiciary

Hearing Date(s) _____ C

1/25 ✓ C

_____ C

_____ C

Date Out 1/26 ✓ C

S. Committee on Judiciary

Hearing Date(s) _____ C

3/15 ✓ C

3/24 ✓ C

3/28 ✓ C

3/29 ✓

Date Out 4/2 ✓ C

Did this bill originate in an interim committee? ___ Yes ✓ No

Committee _____ Report _____

ORIGINAL

REFERRED TO: Judiciary

INTRODUCED BY H BILL NO. 320

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND AND CLARIFY THE LAW RELATING TO COMPARATIVE NEGLIGENCE: TO REQUIRE SPECIAL VERDICTS OR SPECIFIC FINDINGS OF FACT IN ACTIONS INVOLVING ISSUES OF COMPARATIVE NEGLIGENCE, TO REQUIRE JOINDER OF PERSONS WHOSE NEGLIGENCE IS CLAIMED TO HAVE CONTRIBUTED TO THE INJURY, TO ABOLISH THE LAST CLEAR CHANCE DOCTRINE, TO PROVIDE THAT MULTIPLE DEFENDANTS CONTRIBUTE TO PAYMENT OF THE JUDGMENT IN PROPORTION TO THEIR COMPARATIVE NEGLIGENCE, TO DEFINE "NEGLIGENCE", AND TO SPECIFY THE APPLICABILITY OF THE PRECEDING PROVISIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Special verdict or specific findings of fact required in actions involving comparative negligence. Whenever the comparative negligence of the parties is an issue in any action to recover damages for negligence resulting in death or injury to person or property, the jury shall return a special verdict or, in the absence of a jury, the court shall make findings of fact determining the percentage of negligence attributable to each of the parties and the total amount of damages sustained by each of the claimants. The amount of the recovery, if any, shall be

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calculated by the court. The jury shall not return a general verdict.

Section 2. Joinder of persons whose negligence contributed to the injury. On motion of any party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence is claimed to have contributed as a proximate cause to the death or injury shall be joined as an additional party to the action.

Section 3. Last clear chance doctrine abolisned. The last clear chance doctrine is abolished and shall not be applied in any action in the courts of this state.

Section 4. Multiple defendants jointly and severally liable -- right of contribution. (1) Whenever the comparative negligence of the parties in any action is an issue and recovery is allowed against more than one party, each such party is jointly and severally liable for the amount awarded to the claimant but has the right of contribution from any other party against whom recovery is allowed. Contribution shall be proportional to the negligence of the parties against whom recovery is allowed.

(2) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties against whom recovery is allowed is liable to contribute a proportional part of the unpaid

portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party.

Section 5. Definition of negligence. For the purposes of this act, "negligence" includes torts of strict liability and breach of warranty to the extent that they would, apart from 58-607.1, give rise to the defense of contributory negligence.

Section 6. Applicability of act. This act applies to any cause of action which accrued after July 1, 1975, but which has not yet been determined by trial or judgment in the district court as of July 1, 1977.

-End-

JUDICIARY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 316	providing for motor vehicle liability protection for owners & operators as a condition of operation of those vehicles etc.	1-21	E Gunderson	Friday 28th	do not pass	~~2-15~~ 2-23
HB #320	amend & clarify the law relating to comparative negligence. etc.	1-21	Ramirez	Tuesday 25	do pass as amended	1-26
HB #326	to establish training requirements for peace officers	1-21	Lory	Wed. 2nd	do pass as amended	2-7
HB #334	concerning the pleading of damages in actions for personal injury or wrongful death.	1-21	Moore	Weds 26	do pass as amended	2-22
HJR 17	applying to the Congress of the US for the calling of a constitutional convention for proposing an amendment that every human etc.	1-21	O'Connell	Weds 26	do not pass	2-7
HB 353	act concerning the salaries of district judges	1-21	Scully	Weds. 2nd	table indefinitely 2-9	

JUDICIARY COMMITTEE
January 25, 1977

The regularly scheduled meeting of the House Judiciary Committee was held at 8:00 a.m. with Chairman Scully presiding on January 25, 1977, in room 436 of the Capitol Building, Helena, Montana. All members were present with the exception of Representative Kennerly.

Scheduled for hearing were House Bills #280, 291, and 320.

The hearing opened on House Bill #291:
REPRESENTATIVE GILLIGAN, DISTRICT #38:
This bill simply deals with the matter of concealing or obscuring the identity or altering the serial number or any other distinguishing identification number on an article or vehicle.

PROPONENT, BERT KRONIN, COUNTY ATTORNEYS COORDINATOR:
This is merely a housekeeping matter. It clears up some discrepancies.

THE HEARING CLOSED ON HOUSE BILL #291.

THE HEARING OPENED ON HOUSE BILL #280:
CHAIRMAN SCULLY turned the meeting over to the vice-chairman, Representative Teague in order to present the bill, of which he is chief sponsor.

REPRESENTATIVE SCULLY, DISTRICT #76:
This bill will provide a specific time period in which a criminal charge may be amended by the prosecution as to matters of substance and to limit such amendments to one occasion. This came about as a reaction to a supreme court case. The case involved an aggravated assault. He went on to explain the details and circumstances of the case and the resultant decision. It concerned the proving of serious bodily harm and it was asked that it be changed to intent of serious bodily harm. It was necessary to prove apprehension of serious bodily harm, instead of serious bodily harm. He explained the difference. This bill will allow the county attorney any time before 15 days before the trial to amend once in matters of substance, so you can clear up any mistake of misinformation. You can't be always sure that you are completely accurate. The trial is to arrive at the truth.

PROPONENT, TOM HONZEL, DEPUTY COUNTY ATTORNEY:
Representative Scully has outlined the problem. I think the important thing to remember in the bill is the rights of the defendant. The purpose of the document is to give the defendant time so that the defendant knows what he is charged with. We are not violating any substantive rights of the defendant.

OPPONENT, WILLIAM LEAPHART, MEMBER OF THE MONTANA CRIMINAL DEFENSE LAWYERS:
He mentioned an amendment to the code of criminal procedure. You cannot change any matters of substance but matters of form. There are several drawbacks. 1. This bill extends the 5+ years to file a criminal

proceeding. 2. It allows to automatically amend without the courts permission. 3. It works to the prejudice of an accused person. 4. One of the other sections 95-1803 provided 10 days if he enters a plea, if he gives notice of alibi. 5. the criminal defendant has no corresponding right to change the plea. He can only change the plea if he is once into court, if for some reason the plea was not freely given. Essentially this bill does not do anything that is not already available to the prosecution. I recommend this bill do not pass.

REPRESENTATIVE SCULLY:
In closing, this bill allows some practicality and some speed. Dismissal of a case handles all five of the points presented by Mr. Leaphart, if you take the position that dismissal will solve all these arguments. Reality and practicality tells you that you amend the information. Usually on a case the defendant is already in jail. The prosecution is by law to bring them immediately to a speedy trial. I see no point in starting over by dismissing the case. I think this is the place to take care of the problem. You don't have 15 days before a trial if the plea is guilty. This is not practical in handling the arrest and prosecution charge that we have made. He then discussed the errors of form and elements of the crime that could be involved. He again stated the case that had caused the bill to be introduced. The only way you can overturn that type of supreme court decision is through a statutory change.

Then followed discussion about various types of charges, elements of the crime, whether the same charge or not, the difference in whether a change in form or in substance, the different penalty, etc.

REPRESENTATIVE SCULLY explained the documents involved if necessary to start over, etc.

TOM DOWLING:
93% of the people in jail have not been convicted of any crime.

REPRESENTATIVE HOLMES:
Would adding the workds "with leave of court solve the problem?"

Mr. LEAPHART:
Yes, it would help.

No further questions, the hearing closed on House Bill #280.

THE HEARING OPENED ON HOUSE BILL #320:
REPRESENTATIVE RAMIREZ, DISTRICT #64:
This bill is concerned with comparative negligence. If a person is injured by the negligence of someone else but if they also contributed to the negligence, that has been changed. He gave examples, such as 80 to 20 percent of negligence, etc. It left many questions about

procedure. If we do it by means of statues it will solve a lot of problems. It answers 3 questions. 1. the percent of negligence of the defendant, 2. the percent of negligence of the plaintiff, 3. percent of damage sustained by the plaintiff. Section 5 usually applies to products. It preserves the present law, just makes clear and clarifies.

CHAIRMAN SCULLY:
This just clears it up some.

There followed a discussion about the dram shop act. A tavern or bar that serves intoxicating beverages and then that person goes out and injures someone, whether the barowner is thus liable for a % of the damages. This gives the defendant the right to bring in other people he feels may also be responsible.

REPRESENTATIVE DUSSAULT:
How do they determine the percent of negligence.

REPRESENTATIVE RAMIREZ:
This is to help everyone to clarify since that has always been a problem.

PROPONENT, TOM DOWLING:
The trial lawyers love it. They support the bill.

REPRESENTATIVE RAMIREZ:
This is mainly a procedural statute. It doesn't effect anything that has already come to pass. It will apply to every case pending as of July 1, 1977.

A general discussion followed about if the title should change.

The hearing closed on House Bill #320.

The meeting adjourned at 9:55 a.m.

REPRESENTATIVE JOHN SCULLY, CHAIRMAN

Mary Ellen Connelly

Mary Ellen Connelly, Secretary

McLane
Ramirez
Roth
Seifert

The next bill to be brought up for consideration was House Bill #251.

This bill was referred to the sub-committee, along with House Bill #260, (all of the DWI bills in the committee).

The next bill brought up for consideration was House Bill #226,

REPRESENTATIVE SEIFERT made the motion to "DO PASS". Motion seconded.

There was discussion about the penalty, jurisdiction, danger, etc. Question called, motion carried, vote unanimous.

The next bill under consideration was House Bill #320.

REPRESENTATIVE KEYSER made the motion to "DO PASS".

REPRESENTATIVE RAMIREZ made a motion to amend line 4 of the title, following: "TO" strike "AMEND AND".

Motion carried, question called. Motion carried with unanimous "DO PASS AS AMENDED".

The next bill up for consideration was House Bill #291.

REPRESENTATIVE LORY made a motion to "DO PASS". Motion seconded. Discussion followed concerning the possession and transfer, having the right of presumption, in the case of someone bringing something to a second-hand store, etc.

REPRESENTATIVE LORY made a substitute motion to table and hold for future action. Substitute motion carried with unanimous vote.

SUB-COMMITTEE TO STUDY HOUSE BILL #188 and 261 gave a preliminary report so that the whole committee could have some time to think about it before the final report to be presented Friday. The Sub-committee recommended that House Bill #261 come out first and hold #188 to come out later. These bills are on mandatory sentencing.

REPRESENTATIVE RAMIREZ suggested that on House Bill #261 the 5th sub-section, line 24, page 16, be abolished altogether or it should be limited to 1st offense. The committee agreed to delay any action until the full report of the sub-committee.

MEETING ADJOURNED 10:20 A. M.

Representative Scully, Chairman

MEC/dm

Mary Ellen Connelly, secretary

FORTY-FIFTH LEGISLATIVE SESSION

1977

COMMITTEE ON JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
H.B. 310	2-5-77	2-21-77	2-21-77				2-21-77		
H.B. 320	2-16-77	3-15-77	3-24-77				3-24-77		
H.B. 320	Rereferred 3-28-77	3-28-77	3-29-77						3-29-77
H.B. 320	Rereferred 4-2-77	4-2-77	4-2-77					4-2-77	
H.B. 326	2-17-77	3-14-77	3-29-77					3-29-77	
H.B. 334	3-5-77	3-28-77	3-31-77					3-31-77	
H.B. 343	3-2-77	3-16-77	3-16-77				3-16-77		
H.B. 352	3-4-77	3-11-77	3-11-77					3-11-77	
H.B. 355	4-6-77	4-8-77	4-8-77					4-8-77	
H.B. 356	2-21-77	3-25-77	3-31-77					3-31-77	
H.B. 357	4-5-77	4-12-77	4-12-77						As amended be NOT 4-12-77
H.B. 363	2-25-77	3-17-77	3-19-77					3-19-77	
H.B. 371	2-25-77	3-17-77	3-19-77					3-19-77	
H.B. 374	3-5-77	3-28-77	3-31-77						3-31-77
H.B. 384	3-9-77	3-10-77	3-10-77					3-10-77	
H.B. 395	2-25-77	3-11-77	3-11-77				3-11-77		

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 15, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, on the above date at 9:40 a.m. in Room 415 of the State Capitol Building.

ROLL CALL:

All members of the committee were present. Senator Regan was excused to attend another meeting at 10:00 a.m..

WITNESSES PRESENT TO TESTIFY:

Rep. Ramirez - District 64, Billings
George Bennett - Mountain Bell
Jim Hughes - " "
Les Loble - General Telephone of the Northwest

CONSIDERATION OF HOUSE BILL 320:

Rep. Ramirez from Billings, sponsor of the bill, said that this is the Comparative Negligence Act and explained the bill to the committee. Section 1 deals with the way a jury will handle a comparative negligence case. Section 2 deals with those situations in which a plaintiff files suit and the defendants believe there is someone else who might be liable to the plaintiff. Section 3 deals with a combination of tort defendants. It would not deprive the plaintiff from collecting all of his damages. However, the defendants have to work it out among themselves.

There were no proponents or opponents to this bill present. The committee asked questions of Rep. Ramirez. He suggested an amendment (See Ex. 1) if there was a problem with the mandatory provision. Chairman Turnage said that the committee would take it under advisement.

CONSIDERATION OF HOUSE BILL 497:

Rep. Ramirez, sponsor of this bill also, said that this bill was introduced to resolve a problem in telephone service. 94-6-304 is the theft of service statute. To violate this section the defendant must first obtain the services, then that must be done by deception or other means. It is wrong also to give a credit card to someone who you know is going to obtain the services wrongfully. A new section 2 has been added to correct this.

The first proponent to speak, George Bennett, a Helena attorney representing Mountain Bell, said that the legislature last session tried to do what this bill is doing now. Theyhave found that those people who violate the theft of service statute can be found but cannot be prosecuted.

Jim Hughes, also representing Mountain Bell, said that there are even leaflets out now showing people how to cheat the telephone companies.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 320

March 15, 1977

Representative Ramirez

1. Amend page 1, section 1, line 21.
Following: "shall"
Insert: "be required when requested by any party to"

2. Amend page 2, section 1, lines 1 and 2.
Following: "court." on line 1
Strike: lines 1 and 2 in their entirety

JR:lkl

following "city", by striking "POLICE" and inserting "city"; to amend page 1, section 1, line 25, following "all", by striking "drinking" and inserting "alcoholic beverage"; and to further amend page 2, section 1, lines 2 through 8, following "youth" on line 2, by striking lines 2 through 8 in their entirety and inserting a ".". The motion carried unanimously. He then moved that HB 589 as amended BE CONCURRED IN. The motion carried unanimously.

Sen. Towe was assigned by the Chairman to carry HB 589 and 721 on 2nd Reading.

HB 247 - Sen. Murray moved as previously amended BE CONCURRED IN. This bill had been rereferred to this committee for further consideration. After discussion, this motion was made. The motion carried on a vote of 6 - 1 and 1 excused.

HB 238 - Sen. Lockrem of Billings, sponsor of this bill who had not been able to attend the hearing on it, was present and allowed to testify. He said that S.B. 360 was a simpler bill than this and that HB 238 is in bad shape and that it was hard for him to subscribe to it. He told the committee that the Public Service Commission is regulating cities which have city officials who set water rates, and this bill would allow city councils to sit in as a legislative body sitting in a regulatory capacity. He said that the subcommittee had subscribed to this.

Sen. Towe moved that HB 238 BE NOT CONCURRED IN. The motion carried with Sen. Olson voting "No".

HB 513 - Sen. Towe moved to amend page 1, section 1, lines 18 and 19, following "razor,", by striking "shotgun sawed off to a length of 18 inches or less,"; and to amend page 2, section 2, line 12, following "94-8-210", by inserting "which cannot be used for any lawful purpose"; and to amend page 3, section 2, line 9, following "section", by striking the ",". Motion carried unanimously. He then moved that HB 513 as amended BE CONCURRED IN. The motion carried unanimously.

HB 668 - Sen. Lensink moved that HB 668 BE NOT CONCURRED IN. The motion carried on a vote of 4 - 3 with Senators Roberts, Warden and Towe voting "No".

HB 411 - Sen. Towe moved to amend (see attachment #1). The motion carried unanimously. He then moved that HB 411 as amended BE CONCURRED IN. The motion carried unanimously.

The Chairman appointed Sen. Towe to carry HB 411 on 2nd Reading.

HB 320 - Sen. Towe moved that HB 320 BE CONCURRED IN. The motion carried unanimously. Sen. Towe will also carry this bill on 2nd Reading

HB 633 - Sen. Lensink moved that HB 633 BE NOT CONCURRED IN. The motion carried on a vote of 6 - 1 with Sen. Roberts voting "No" and 1 senator excused.

There being no further business, the committee adjourned at 11:15 a.m..

Joan A. Thomas '13

in court if the defendant has acted wrongly.

FURTHER CONSIDERATION OF HOUSE BILL 320:

The comparative negligence bill is on 2nd Reading this day. However, the Chairman allowed Roland V. Colgrove of Miles City to testify on this bill as he apologized to the committee for not attending the original hearing on HB 320, but said that he did not know the bill was coming up so soon and did not have a chance to write a brief on it. He told the committee that this bill provides that the jury determine the total amount of the damages and the negligence percentagewise. It is very important that the jury should know that, if they find the plaintiff 50% negligent, the plaintiff gets nothing. The jury cannot be told of the Answers to the Interrogatories. Under Federal Jury Practices & Instructions, Section 606 -- Instructions by the Court, the jury should know the effect of its apportionment and how it is going to affect the parties. He said further that the judge has the discretion under Rule 49, and that there is no need for this type of legislation as it sets forth something that the jury can do as well as the judge. This bill says the jury shall not return a general verdict.

An opponent to the bill, Bill Leaphart, president of the Trial Lawyers Assn., said that they support the position of Mr. Colgrove.

Rep. Ramirez said that he had sent copies of the bill to lawyers in Billings and did not try to hide this bill. It was not intended to say what was to be told to the jury. He thinks that should be decided by the Supreme Court and does not see any reason why an instruction could not be offered saying how it is to be done on a case. He said that he does not think the objections to the bill are valid, and that Rule 49 is not sufficient because the judge should not have discretion and also because there is no way to review it. This bill was patterned after the Kansas statute.

There being no further business, the committee adjourned at 12:00 noon.

Jean A. Turnage

SENATOR JEAN A. TURNAGE, Chairman

(GR. 6)

COMPARATIVE NEGLIGENCE--Taken from Boulder case in Colorado.

"If you find that both the railroad and Mr. Maxwell were negligent and that negligence of both contributed to causing the collision, then, you should consider the following instruction:

If Mr. Maxwell's negligence contributed less than 50% to the cause of the collision, the Plaintiff may still recover damages in the amount determined by multiplying the total damages which you find the Plaintiff has suffered by the percentage of negligence on the part of the railroad which contributed to the causing of the collision.

The Court will perform this multiplication after you have made your determination of the total amount of damages, and the percentages of negligence causally related to the collision.

If Mr. Maxwell's negligence contributed 50 per cent or more of the total negligence, then the plaintiff shall recover nothing from the defendant railroad."

TAKEN FROM AMERICAN JURISPRUDENCE--TRIALS--VOL. 21

Page 727 chapter 5 Discretionary versus Mandatory Special Verdicts.

In Arkansas, the matter of submitting interrogatories to the jury for rendition of a special verdict is within the discretion of the trial Court, and the vast majority of cases are submitted on a general verdict.

Page 749 Chapter 17.

**The jury cannot be told the effect of answers to the interrogatories submitted in connection with a special verdict. On some occasions, in answering interrogatories, juries will divide the negligence equally and then be horrified to discover that they have decided the cause completely in favor of the defendant--a result often completely unintended.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 29, 1977

The meeting of this committee was called to order on the above date by Senator Turnage, Chairman, at 9:35 a.m. in Room 415 of the State Capitol Building.

ROLL CALL:

All committee members were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Rep. Scully - Bozeman
Tom Honzel - County Attorneys Assn.

CONSIDERATION OF HOUSE BILL 280:

Rep. Scully of Bozeman, sponsor of the bill, said that this bill would provide a specific time period in which a criminal charge may be amended by the prosecution without leave of the district court. He said that the House had put in an amendment to make the bill read "with leave of court" and he would like to have this committee amend it back out by reinserting the word "without" and striking "with".

Tom Honzel, representing the County Attorneys Assn., appeared as a proponent of the bill. He gave a copy of the Uniform Rules to the committee and asked that this bill be amended to reflect these rules. (See Exhibit 1). He said that the emphasis is based on the conduct of the defendant and asked what conduct he is being charged with. This bill does not violate the double jeopardy clause of our constitution.

There were no opponents to the bill.

In answer to a question by Sen. Turnage, Rep. Scully said that 5 days would be much better than 15 days.

Sen. Towe then moved amend line 16 by changing the figure to "5" from "15". The motion carried unanimously.

Sen. Olson moved to strike "with" and insert "without". The motion carried with Sen. Towe voting "No".

Sen. Warden then moved that HB 280 as amended BE CONCURRED IN. The motion carried unanimously.

EXECUTIVE SESSION

HB 761 - Sen. Warden moved BE NOT CONCURRED IN. The motion carried with Sen. Murray voting "No" and Sen. Towe abstaining.

HB 320 - Sen. Regan moved that HB 320 BE NOT CONCURRED IN. The motion carried unanimously.

STANDING COMMITTEE REPORT

March 29, 19 77

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 320

Respectfully report as follows: That HOUSE Bill No. 320

BE NOT CONCURRED IN

~~DO PASS~~

Chairman.

SEN. JEAN A. TURNAGE.

STATE PUB. CO.
Helena, Mont.

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MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
April 2, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, at 9:50 a.m. on the above date in Room 442 of the State Capitol Building.

ROLL CALL:

All committee members were present for this meeting.

EXECUTIVE SESSION

HB 320 - Sen. Towe moved to amend HB 320 by striking sections 1 and 2 in their entirety and to further amend the bill by making the title conform. The motion carried unanimously. He then moved that HB 320 as amended BE CONCURRED IN. The motion carried unanimously.

HJR 63 - Sen. Warden moved that HJR 63 BE NOT CONCURRED IN. The motion carried on a vote of 6 - 2 with Senators Regan and Towe voting "No".

HB 499 - Sen. Towe moved that HB 499 be amended. (See Attach. #1) The motion carried unanimously. He then moved that HB 499 as amended BE CONCURRED IN. The motion carried unanimously. The secretary was instructed to hold this committee report and to request an amended fiscal note for the committee to consider before the report is turned in.

At this time, the Chairman allowed Sen. Towe to express his views on HB 544 and the committee discussed the bill with him. However, there was no change made in the committee's action of 4/1/77.

There being no further business before the committee at this time, the committee adjourned at 11:00 a.m..

Jean A. Turnage

SENATOR JEAN A. TURNAGE, Chairman

STANDING COMMITTEE REPORT

April 2, 19 77

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 320

Respectfully report as follows: That HOUSE Bill No. 320,
the third reading bill, be amended as follows:

1. Amend title, ~~page~~ lines 4 through 9.
Following: "ACT"
Strike: lines 4 through 9 in their entirety

2. Amend title, line 10.
Following: "DEFENDANTS"
Insert: "IN NEGLIGENCE ACTIONS"

3. Amend title, line 12.
Following: "NEGLIGENCE"
Strike: ","

4. Amend title, line 13.
Following: "OF"
Strike: "THE PRECEDING PROVISIONS"
Insert: "THAT PROVISION"

5. Amend page 1, section 1, line 16.
~~Delete~~ Following: line 15
Strike: sections 1 and 2 in their entirety
Renumber: all subsequent sections

AND AS SO AMENDED, BE CONCURRED IN

SEN. JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

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board to be the most practicable and expeditious to test the applicant's qualifications. The application shall be designated by a number instead of the applicant's name, so that the identity will not be discovered or disclosed until after the examination papers are graded.

(2) Examinations shall be made in writing, the subjects of which are as follows: anatomy, physiology, symptomatology, diagnosis, chiropractic orthopedy, principles of chiropractic and adjusting, sanitation and hygiene, urinalysis, gynecology, and palpation. Additional subjects may be prescribed by the board to meet new conditions. A license shall be granted to applicants who correctly answer 75% of all questions asked, and if an applicant fails to answer correctly 60% of the questions on any branch of the examination, he is not entitled to a license.

(3) The board may accept the grades an applicant has received in the written examinations given by the national board of chiropractic examiners and may authorize the department to issue a license without further written examination to an applicant who holds a valid certificate from the national board of chiropractic examiners, if the applicant meets the other requirements of this chapter and satisfactorily passes a *clinical proficiency* examination before the department, subject to section 82A-1603."

Approved April 19, 1977.

CHAPTER NO. 433

AN ACT TO PROVIDE THAT MULTIPLE DEFENDANTS IN NEGLIGENCE ACTIONS CONTRIBUTE TO PAYMENT OF THE JUDGMENT IN PROPORTION TO THEIR COMPARATIVE NEGLIGENCE AND TO SPECIFY THE APPLICABILITY OF THAT PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 58-607.2 that reads as follows:

58-607.2. Multiple defendants jointly and severally liable — right of contribution. (1) Whenever the comparative negligence of the parties in any action is an issue and recovery is allowed against more than one party, each such party is jointly and severally liable for the amount awarded to the claimant but has the right of contribution from any other party against whom recovery is allowed. Contribution shall be proportional to the negligence of the parties against whom recovery is allowed.

(2) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties against whom recovery is allowed is liable to contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party.

Section 2. **Applicability of act.** This act applies to any cause of action

which accrued after July 1, 1975, but which has not yet been determined by trial or judgment in the district court as of July 1, 1977.

Approved April 19, 1977.

CHAPTER NO. 434

AN ACT TO ESTABLISH A PROGRAM OF SUBSIDIES FOR THE ADOPTION OF HARD-TO-PLACE CHILDREN; AND REPEALING SECTIONS 71-1801 THROUGH 71-1805, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 71-1806 that reads as follows:

71-1806. Short title. This act may be cited as "The Subsidized Adoption Act of 1977".

Section 2. There is a new R.C.M. section numbered 71-1807 that reads as follows:

71-1807. Purpose. The purpose of this act is to encourage and promote the adoption of children who are hard to place by providing information and assistance in completing the adoption process and financial assistance when necessary to ensure the health and welfare of the hard-to-place child.

Section 3. There is a new R.C.M. section numbered 71-1808 that reads as follows:

71-1808. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of social and rehabilitation services.

(2) "Hard-to-place child" means a minor as defined by 64-101, who is a dependent of a public or voluntary licensed child-placing agency, legally free for adoption, and is not likely to be adopted because of:

(a) physical or mental disease or disability;

(b) recognized high risk of physical or mental disease or disability; or

(c) sibling relationship to another child who is eligible for adoption.

Section 4. There is a new R.C.M. section numbered 71-1809 that reads as follows:

71-1809. Power and duties of the department. (1) The department shall establish, administer, and regulate a continuing program of subsidized adoption.

(2) The department shall keep such records as are necessary to evaluate the program in terms of the number of children adopted under the program, the cost of the program, and any other pertinent information.